

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

IRFAN ITAYEM,

Defendant.

CASE NO. 1:06CR338

ORDER [Resolving Doc. 533]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On February 8, 2007, the Court committed Defendant Irfan Itayem (“Itayem”) to the Bureau of Prisons for a period of one year and one day on Count 1 of the Indictment with credit for time served. [Doc. 505.] With this motion, Defendant Itayem motions the Court to reduce his sentence, arguing that (1) the Court erred in finding that the Defendant was personally responsible for distributing at least 50 but less than 100 grams of cocaine; and (2) the sentence imposed will impact the Defendant more severely than the Court may be aware, in that the Defendant will lose his job if incarcerated. [Doc. 533.] The Government opposes the Defendants motion, arguing that the Court lacks jurisdiction to alter the existing sentence. [Doc. 534.] The Court agrees with the Government and therefore DENIES the Defendant’s motion.

Pursuant to Federal Rules of Criminal Procedure, Rule 35, a Court has limited jurisdiction to correct or reduce a criminal defendant's sentence. FED. R. CRIM. P. 35. Specifically, Rule 35 only allows the Court to alter a sentence where either (1) the change addresses a clear error resulting from a technical mistake and is made within seven days after the sentencing; or (2) upon a motion by the government to reduce a Defendant's sentence for substantial assistance. FED. R. CRIM. P. 35(a-b).

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Here, the Defendant's motion provides no basis for jurisdiction given that it (1) was filed more than two months – rather than within seven days – after sentencing, (2) alleges no mistake in the sentencing process, let alone a clear error, and (3) is not accompanied by a government motion requesting a reduction for substantial assistance. Accordingly, the Court denies the Defendant's motion for lack of jurisdiction.

IT IS SO ORDERED.

Dated: July 30, 2007

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE